IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 163 of 2005.

Decided on : October 17, 2006.

Development of Women & Children
In Rural Area Group/ Society. …..Appellant.

VERSUS

Smt. Babli wd/o Bal Raj & ors. …..Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellant : Ms. Bindiya Sharma, Advocate.

For the Respondents :

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent-plaintiff filed a suit against the present appellant and respondents No. 2 and 3, seeking a mandatory injunction directing the present appellant, who was impleaded as defendant No. 3, to vacate shop No. 32, situated at Aut and to deliver its possession to him (respondent-plaintiff). It was alleged that initially the respondent- plaintiff used to do some business by the side of the National Highway at Aut, where he had parked his Rehri. With a view to widening the National Highway, the authorities wanted the Rehri

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Whether the reporters of the local papers may be allowed to see the Judgment?

and other Khokhas existing on the sides of the National Highway to be removed. A society, i.e. respondent No. 2, was constituted. The society assured the plaintiff and other persons, who used to park their Rehries or had their Khokhas by the sides of the National Highway that in case they removed their Rehries and Khokhas, they would be provided shops at another site, belonging to the government. The plaintiff and other persons agreed to the proposal. Shops were got constructed by respondents No. 2 and 3, on some adjoining government land and one of the shops bearing No. 32, was allotted to the plaintiff. Plaintiff started paying rent for that shop. In the year 1992, there had been heavy rains, which caused flooding of the area and in that flood, the shop of the plaintiff and several other shops were washed away completely. Respondents No. 2 and 3 assured the allottees of those shops that new shops would be constructed and allotted to them on rent. Respondents No. 2 and 3, then got reconstructed those shops. However, shop No. 32 instead of being allotted to the plaintiff was allotted to the appellant, who was impleaded as defendant No. 3 in the suit. Therefore, the respondent-plaintiff filed the suit for mandatory injunction directing the appellant to vacate the shop.

3. The plea taken by the appellant and the other two respondents was that after the shops had been washed away, the plaintiff shifted to his native place in Una District and did not come forward to seek allotment of the reconstructed shops even when a portion of the security money was remitted to him at his native place in Una District after deducting the arrears of rent due from him in

respect of the original shop for a period of 2-3 months. They stated that thereafter applications were invited for allotment of shop No. 32. Plaintiff did not make any application. The present appellant submitted an application in response to that notice of invitation of applications and the shop in question was allotted to it. Suit was decreed by the trial court with the finding that the shop could not have been allotted by respondents No. 2 and 3 to the appellant or for that matter to any other person, because the shop, which was initially constructed at the site of this shop, had been allotted to the plaintiff pursuant to the assurance given to him at the time of his removing the Rehri from the side of the National Highway, and also because no specific notice was given to him that he having not come forward to take the possession of the reconstructed shop, it was intended to be re-allotted by inviting fresh applications. Appeal filed by the appellant in the court of District Judge stands dismissed.

4. Learned counsel representing the appellant says that the shop stands on a piece of land which belongs to the State Government and therefore, the State Government was a necessary party and it having not been impleaded, the suit was bad for non-joinder of necessary parties. It is also submitted that since the plaintiff had not made any application for the allotment of the re-constructed shop, decree of mandatory injunction could not have been passed in his favour.

5. I have gone through the record as also the judgements of the two courts below. A perusal of the record shows that no plea was raised by the appellant that State Government was a necessary

party and the suit was bad on account of its non-joinder. Now it is too late in the day for the appellant to say that the suit was bad for non-joinder of necessary parties and, therefore, it could not have been decreed. In any case, even though the land belongs to the State Government, the shops on this land were got constructed by respondents No. 2 and 3 and the allotment of the re-constructed shop, in question, in favour of the appellant has been made by respondents No. 2 and 3, and therefore, the appellant is estopped from claiming that shop belongs to the State Government.

6. As stated hereinabove, the shop was initially allotted to the plaintiff. Plaintiff even occupied that shop. Thereafter, the shop was destroyed/ washed away by the flood. Respondents No. 2 and 3 assured the plaintiff and other persons, whose shops had been washed away that they would be reconstructing those shops. Now once the allotment was there in favour of the plaintiff, there was no question of the re-allotment of the shop to the present appellant after its reconstruction. In case, respondents No. 2 and 3 felt that shop was to be re-allotted to some other person on account of the plaintiff having not come forward to take possession, they must have issued a notice to him that the allotment in his favour was proposed to be cancelled on account of his not laying claim to the reconstructed shop and after the proposed cancellation of his allotment the shop was intended to be leased out to some other person.

7. In view of the above stated position, I do not think any substantial question of law arises or the two courts below have

committed any illegality or even irregularity in decreeing the suit of respondent No.1. Consequently, the appeal is dismissed.

CMP No. 263 of 2005.

8. Interim order dated 8.4.2005 stands vacated and the application is dismissed.

October 17, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**